

REMARKS/ARGUMENTS

The non-final Office Action of May 6, 2008 has been carefully reviewed and this paper is responsive thereto. Claims 23, 25, 27-31, 33-35, 37-43 and 45-50 were pending in the application and stand rejected. By this response, claims 23, 25, 29, and 49 have been amended and claim 50 has been canceled. Applicants appreciate the statement in the Office Action stating that claims 29-31, 33-35, and 37-43, and 45-48 would be allowable pending correction, and that claim 50 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. No new matter has been introduced into the application. As explained in more detail below, Applicants submit that all claims are in condition for allowance and respectfully request such action.

Claim Amendments

Claims 23, 25, 29, and 49 have been amended. Claim 23 has been amended to include the feature of “an electrical probe in the brain providing an electrical output related to measurement of an ion-concentration related brain parameter.” This amendment is supported at least by claim 25 (which has been amended) and paragraph [0023] of the application as originally filed.

Claim 25, which depends from claim 23, has been amended to delete the feature “further comprising a probe in the brain providing an output related to measurement of an ion concentration related brain parameter” in view of the amendment to independent claim 23. Claim 25 has also been amended to claim “including computer control ~~which~~ that reads the electrical output of the electrical probe to responsively control at least one of fluid extraction, fluid delivery, and ion concentration.”

Claim 29 has been amended to claim “An apparatus” to be consistent with its corresponding dependent claims, and has been amended to claim “d) means for measuring the electrical conductivity of the brain fluid . . .”

Claim 49 has been amended to claim the feature of original claim 50, *i.e.*, “means for diagnosing an epileptic condition in a patient.”

Claim Objections

Claims 29-31, 33-35, and 37-43 and 45-48 were objected to because of the following informalities: Independent claim 29 claims “a system” whereas dependent claims 30-35 and 37-48 claim “the apparatus”. As noted above, claim 29 has been amended to claim “An apparatus” rendering this objection moot.

Claim 29 was objected to because of the following informality: There is insufficient antecedent basis for the feature “the brain fluid.” As noted above, the word “the” has been deleted in part d), thereby rendering this objection moot.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 23 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,445,500 to Osterholm (“Osterholm”). As noted above, independent claim 23 has been amended to include an additional feature. Amended claim 23 now recites the following:

23. (Currently Amended) A system for controlling epileptic seizures comprising:

- a) a brain fluid pumping mechanism, having an input, coupled to a patient's brain for extracting brain fluid, and having an output;
- b) a fluid ion adjustment mechanism coupled to said output of said brain fluid pumping mechanism, said fluid ion adjustment mechanism having an output from which modulated ion-content fluid is produced; and
- c) a catheter, having an input coupled to the output of said ion adjustment mechanism and having an output inserted into a predetermined region of a patient's brain; and
- d) computer control that reads and executes stored program instructions that cause the pumping mechanism to pump the extracted fluid according to the program, and
- e) an electrical probe in the brain providing an electrical output related to measurement of an ion-concentration related brain parameter.

whereby brain fluid is extracted from a patient's brain, ion-concentration of said fluid is adjusted and said brain fluid is re-injected into said brain.

Osterholm does not disclose "an electrical probe in the brain providing an electrical output related to measurement of an ion-concentration related brain parameter". There is no teaching in the cited art that would render the claim 23 obvious to a person of ordinary skill in the art. Claims 25 depends from claim 23 and is patentable over Osterholm for at least the same reasons that claim 23 is patentable over Osterholm and for the additional features recited therein.

Claims 27 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,445,500 ("Osterholm") in view of alleged applicant admitted prior art (AAPA). Claim 27 depends from claim 25, which depends from independent claim 23, and claim 28 depends from claim 27. Neither Osterholm nor alleged AAPA, either alone or in combination, provides a teaching that would render claim 23 or claim 25 obvious to a person of ordinary skill in the art. Thus, claims 27 and 28 are each patentable over Osterholm for at least the same reasons as claim 23 and claim 25 are patentable over the proposed combination of prior art, and for the additional features recited therein.

Claim 49 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,445,500 ("Osterholm") in view of alleged applicant admitted prior art (AAPA) and further in view of U.S. Patent No. 6,402,941 to Lucido et al. ("Lucido"). As recognized in the Office Action, the proposed combination does not teach or otherwise render obvious "means for diagnosing an epileptic condition in a patient" recited in dependent claim 50. Claim 49 has been amended to claim this feature in claim 50, and claim 50 has been canceled. In view of the foregoing, it is respectfully submitted that claim 49 is condition for allowance.

Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections.

Conclusion

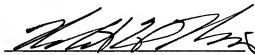
It is respectfully submitted that the pending claims are in condition for allowance. The Examiner is invited to contact the undersigned at the telephone number provided below should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,

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